Federal Communications Commission
Washington, D.C. 20554

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DA 04-207

Mr Douglas I Brandon
Vice President – External Affairs & Law
AT&T Wireless
1150 Connecticut Ave , N W., 4th Floor
Washington, D C 20036

RE *Customer Proprietary Network Information – Wireless Priority Service, CC Docket Nos 96-115, 94-149*

Dear Mr Brandon

This letter addresses AT&T Wireless's (AWS) January 7, 2004 letter[1] requesting that the Commission affirm that AWS may lawfully disclose customer proprietary network information (CPNI) in providing priority access service (PAS)[2] without obtaining prior customer consent under the circumstances described in the letter In particular, AWS states that it is pursuing discussions with the National Communications System (NCS)[3] and NCS's agent, Computer Sciences Corporation (CSC), to provide priority access service [4]

By way of background, in July 2000, the Commission responded to a request from the NCS and amended its Part 64 Rules to permit commercial mobile radio service (CMRS) providers to voluntarily offer priority access service to national security and emergency preparedness (NSEP) personnel [5] Under these PAS Rules, authorized NSEP users in emergencies can gain access to the next available wireless channel to originate a call, however, the priority calls would not preempt calls in progress.[6] As

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[1] Letter from Douglas I Brandon, Vice President – External Affairs & Law, AT&T Wireless, to William Maher, Chief, Wireline Competition Bureau, and John Muleta, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, CC Docket Nos 96-115 and 96-149 (filed Jan 7, 2004) (AWS Jan 7 *Ex Parte* Letter)

[2] The terms "priority access service" and "wireless priority service" are synonymous We use the term "priority access service" herein

[3] The NCS is an organization created by Executive Order to administer and manage the telecommunications assets of 23 federal government organizations in serving the national security and emergency preparedness (NSEP) needs of the federal, state and local governments *See* Executive Order 12,472, Assignment of National Security and Emergency Preparedness Telecommunications Functions, 49 Fed Reg 13471 (1984)

[4] Wireless priority service provides priority access to wireless networks to national security and rescue workers during emergencies

[5] *See The Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Agency Communication Through the Year 2010*, Second Report and Order, WT Docket No 96-86, 15 FCC Rcd 16720, 16721, para 3 (2000) (*PAS R&O*) The rules became effective on October 9, 2000, 60 days after publication in the Federal Register *See* 65 Fed Reg 48393 (Aug. 8, 2000).

envisioned by the Commission's Part 64 Rules, priority access service is triggered on a per call basis by dialing a feature code and is available to authorized NSEP users at all times.[7] The priority access service provider must designate a point of contact to coordinate with the NCS for administration of priority access service. The Commission does not require CMRS providers to offer priority access service or to adhere to particular technical standards in implementing priority access service.[8] The Commission's PAS Rules also provide that the Executive Office of the President (EOP), acting through NCS, will administer priority access service. The NCS will receive, process, and evaluate requests for priority actions from authorizing agents.[9] Further, the NCS assigns priorities or denies requests for priority and conveys its determinations to the service provider and the authorizing agent. The priority access service provider must also participate in reconciliation and revalidation of priority access service information at the request of the NCS.

AWS states that it will provide the service directly to its customers, and notes that NCS administers the program and is responsible for assigning priority status to end users.[10] AWS further states that NCS has requested that it provide priority access service subscribers' call records, including location and charges for the calls, so that it can ensure the system is not being misused.[11] AWS explains that because NCS simply provides wireless carriers with a list of the authorized priority access service users on their networks, AWS is not in a position to obtain the customers' consent to the disclosure of the information before it initiates service.[12] NCS has stated that it does not plan to obtain consent from priority access service subscribers to access their CPNI or to condition grant of priority access service status on an agreement to allow AWS to disclose such information.[13]

Section 222 of the Communications Act generally bars carriers from disclosing customers' CPNI to third parties without customer approval unless otherwise required by law.[14] AWS interprets the customer information covered by the priority access service program to be subject to an exception to section 222's disclosure prohibition, which allows disclosure in certain cases to protect against fraudulent or unlawful use. In particular, AWS states that "[b]ecause widespread abuse of the [priority access service] program could undermine its effectiveness, prevent life and property-saving calls by legitimate [priority access service] users and tie up circuits that AWS' other subscribers could be using, AWS would be permitted under section 222(d)(2)'s antifraud provision to disclose, without customer consent, the call detail records of [priority access service] users to CSC/NCS."[15] AWS further states it will include certain contractual provisions to guard the privacy of priority access service users. In particular, AWS states that the contract will specify that the CPNI provided to NCS/CSC can be used only under the terms set out in

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[6] *Id* at 16721, para. 3.

[7] *See* 47 C.F.R. Part 64, Appendix B.

[8] *PAS R&O*, 15 FCC Rcd at 16722, 16729, paras. 4, 17.

[9] An authorizing agent is a Federal or State entity that authenticates, evaluates and makes recommendations to NCS regarding the assignment of PAS levels. *See* 47 C.F.R. Part 64, Appendix B, § 2d.1.

[10] AWS Jan. 7 *Ex Parte* Letter at 1.

[11] *Id*.

[12] *Id*.

[13] *Id* at 1-2.

[14] *See* 47 U.S.C. § 222(c)(1).

[15] AWS Jan. 7 *Ex Parte* Letter at 1.

the antifraud provisions of section 222 The contract would also require NCS/CSC to provide notice to priority access service users that the records of those calls might be provided by a wireless provider to NCS/CSC

Based on the circumstances that AWS describes in its letter, including the contractual provisions designed to protect priority access service users' privacy, we confirm AWS's interpretation of section 222 and the Commission's implementing regulations Specifically, it would appear that the use of CPNI as described in AWS's letter would fall within the exception contained in section 222(d)(2) If AWS disagrees with any of this letter's guidance, it may file an application for review with the Commission pursuant to section 1 115 of the Commission's rules.[16]

Please do not hesitate to contact us if we can be of further assistance In addition, you may contact Bill Dever, Assistant Division Chief. Competition Policy Division in the Wireline Competition Bureau at (202) 418-1578

Sincerely,

William F Maher, Jr
Chief, Wireline Competition Bureau

John Muleta
Chief, Wireless Telecommunications Bureau

[16] 47 C F R § 1 115